OLG Stuttgart judgment of February 16, 2016, 12 U 63/15

Auslobung: Willing to bind in the event of a negative claim; Interpretation of a competition regarding the detection of the measles virus

tenor

1. Following the defendant's appeal, the judgment of the Ravensburg Regional Court of March 12, 2015 - 4 O 346/13 - is amended and taken as follows:

(1) The defendant is ordered to pay the plaintiff EUR 492.54 plus annual interest from this in the amount of 5 percentage points above the respective base rate since April 16, 2014.

(2) The rest of the complaint is dismissed.

2nd. The defendant's further appeal is rejected as inadmissible.

3rd. The plaintiff bears the costs of the legal dispute in both instances.

4th. The judgment and judgment of the district court, insofar as it is upheld, are provisionally enforceable.

The plaintiff can avert enforcement against security in the amount of 115% of the enforceable amount, unless the defendant has security in the amount of 115% before enforcement % of the amount to be enforced.

5. The object value for the appeal process is set at up to EUR 110,000.00.

reasons

I.

1 The parties mainly argue whether the plaintiff can claim the amount of EUR 100,000 awarded by the defendant for the detection of the measles virus.

2nd 1. Contrary to the unanimous opinion in science, the defendant, a biologist, is of the opinion that measles are not caused by viruses, rather that there is no measles virus and cannot exist. On the website of the „ k ... - k... On November 24, 2011, he awarded publishers “ prize money „ of EUR 100,000.00 as follows:

3rd „ The prize money is paid out when a scientific publication is presented in which the existence of the measles virus not only asserts, but also proves and in it. a. whose diameter is determined.

2017 Jan. Feb. March Apr. May June
July Aug. Sep. Oct. Nov. Dec.
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2009 Jan. Feb. March Apr. May June
July Aug. Sep. Oct. Nov. Dec.
2008 Jan. Feb. March Apr. May June
July Aug. Sep. Oct. Nov. Dec.

RSS feeds

imprint

In Zusammenarbeit mit juris

4th The prize money is not paid out if the diameter of the measles virus is only a model or drawing such as ... “

5 For further details of the text, reference is made to the detailed description of the facts of the judgment of the Ravensburg Regional Court and to Appendix K 1. Whether the full text of the award on the website of „ k ...- k... Seeing publishers “ or only being able to read them by calling up the newsletter - also stored on the Internet - has become controversial in the second instance. In any case, the plaintiff was not the recipient of the newsletter.

6 The plaintiff, then still a student and now a doctor, wrote (on January 31, 2012. K 4) presented the defendant with several publications which, in his opinion, prove the existence of the measles virus beyond any doubt and asked for the prize money to be paid out. The defendant refused to do so because the measles virus was not proven.

7 The defendant also runs the publishing house „ W... A ... and Verlag “, on whose homepage on the Internet on April 13, 2014, three days after the first negotiation date in this matter, was read at times:

8th „ On Monday, April 14th, 2014 we will report here, to which we will point out in a newsletter, that why and how the unpromoted, foreign young doctor D... B ... and his illegal backers in „ betting that there are no measles viruses! “ Trial on April 10, 2014, before the Ravensburg Regional Court, the court and the public. We expect Dr. L ... will be acquitted on April 24, 2014 and D... B ... is arrested for legal fraud, insolvency of court and lawyer fees, expenses and allowances, allowance for massive bodily harm, partly with fatalities and due to the risk of flight abroad. “

9 The plaintiff contested this and asked the defendant for a criminal injunction, which he made on April 15, 2014 (Anl. K 11).

10 He paid EUR 155.00 of the legal fees incurred on the part of the plaintiff in the amount of EUR 492.54 and was paid for the excess amount by R... Legal protection insurance company authorized to assert.

11 The applicant submitted in the first instance that,

all the requirements that the defendant made in his statement were met. The publications he submitted undoubtedly prove the existence of the measles virus in the scientific sense and determine its diameter.

12 The defendant had to bear the claimed extrajudicial legal fees for obtaining a criminal injunction because he was responsible for the content of his homepage. There is also prima facie evidence that he himself put the content on his homepage.

13 The plaintiff applied in the first instance,

14 1. Order the defendant to pay the plaintiff EUR 100,000.00 plus 5% interest above the base rate since May 1, 2012;

15 2. Order the defendant to pay the plaintiff a secondary claim of EUR 2,924.07 in extrajudicial legal costs;

16 3. Order the defendant to pay the plaintiff an amount of EUR 492.54 plus 5% interest above the base rate since April 16, 2014.

17th The defendant has requested in the first instance that,

18th dismiss the application.

19th The defendant has stated in the first instance that,

the publications submitted did not meet the requirements imposed by the award. The existence of the measles virus must be proven by a publication on the part of the R ... K ... Institute (hereinafter: RKI), which is responsible for this in accordance with Section 4 of the Infection Protection Act (IfSG). This already follows from the fact that with regard to the award made in

Germany, the rules of the IfSG specially created here for the evidence in the area of infectious diseases must be used. The purpose of the award is clearly to clarify whether there is a documentation of the RKI corresponding to the K ... postulate of isolation of the pathogen.

20th In addition, the request was made to submit a single publication, in which both the proof of the existence of the measles virus and its diameter are determined, so that it is not sufficient, if - as represented by the expert - only the combination of the scientific statements in the six submitted specialist articles proves the existence of the measles virus and at least two of these articles contain sufficient information on the diameter of the measles virus. In addition, the content of the publications submitted did not meet the requirements for the evidence. The phenomena output as measles viruses are actually cell-owned transport vesicles (vesicles). None of the documentation submitted is based on attempts to,in which the pathogen - as required - was previously isolated and characterized biochemically or even such isolation was scientifically documented. The type of evidence in the experiments to which the plaintiff relies does not correspond to the state of the art in science and technology and does not meet the requirements for evidence, taking into account the...Postulate. In addition, the submitted work was unsuitable because it all came from before the IfSG came into force on January 1st, 2001 and did not constitute a publication of the RKI. The determination of the diameter was also not well founded. The size range of 300 to 1000 nm given in one of the publications presented already refutes the thesis of the virus,because viruses were characterized by a small variation in their diameter between 15 and a maximum of 400 nm. Furthermore, information from the RKI dated January 24, 2012 shows that the diameter of measles viruses should be 120 - 400 nm and that ribosomes are often contained inside, the latter would conflict with the existence of a measles virus.

21 The declaration on the publisher's homepage „ W... A ... and Verlag “ did not come from him and was no longer there at the time of the required declaration of omission. Accordingly, he had given no reason for the plaintiff's legal representative to act out of court.

22 Because of the further presentation of the parties in the first instance, reference is made to the facts of the judgment of the district court as well as the written pleadings changed in the first instance along with attachments and the minutes of the meeting.

23 2nd. The district court, by judgment, the tenor of which was announced at the end of the last hearing by reading (Bl. 150, 151 d. A.), the lawsuit is fully upheld. The publication of the tender text on the Internet represents a public announcement of the award. The interpretation of the text leads to the result that, that, contrary to the defendant's view, the publications must neither be those of the RKI nor come from the period after the IfSG came into force and the text of the award should not be understood as, that the required proof must be provided in a single publication or that reviews should not be used. As can be seen from the convincing expert opinion of Prof. Dr. Dr. P ... surrender,the publications are all scientific articles. According to the expert's statements, they did not prove to themselves, but in their overall view the existence of a virus that was the cause of measles disease. In their summary, they also fulfilled the K ... - H ... 'postulates raised by the defendant in the course of the legal dispute as a standard of proof. The own chain of evidence required by him for the detection according to which the measles virus photographs in a person or his body fluid, isolated from it, purified, photographed again and then its composition must be characterized biochemically with a subsequent reinfection experiment, merely represents a hypothesis that does not have scientific significance,because it is not a scientifically established standard.

24 A claim for reimbursement of legal costs for the declaration of omission - with the authorization of legal expenses insurance - consists of an offense in accordance with § 831 BGB. The statement at issue constitutes a factual claim, that violate the plaintiff's right to personality. The defendant did not discharge the entry by any employees in accordance with section 831 (1) sentence 2 of the German Civil Code (BGB), which is why their behavior is attributable to him.

25 Because of the reasons in detail, reference is made to the reasons for the decision of the judgment of the district court.

26 The defendant appealed against the judgment served on April 15, 2015 to the Stuttgart Higher Regional Court on April 27, 2015. The grounds for the appeal were received there on July 7, 2015 - after the deadline for reasons had been extended until July 15, 2015.

27 3rd. The defendant submits,

the effectiveness of the „ protocol judgment “ is already criticized. Not all judges had signed under the minutes. The combination of minutes of the meeting and decision formula signed by all judges is not sufficient. In addition, there were complaints that the judgment had not been handed over to the office within the stipulated deadlines. The substitute judge P ... may not have been prepared for the complexity of the case. Contrary to the minutes, the matter and the result of the evidence were not negotiated after hearing the expert, rather the chair judgment was preceded by a „ factual ban on speaking and questioning “. The decision to provide information and evidence dated April 24, 2014 was not justified or impracticable. Finally, the right to be heard was violated because the witness private lecturer Dr. M...was not invited by the RKI, the court did not go into reading the information of the RKI of January 24, 2012, the co-plaintiff was not negotiated and the offer of evidence regarding his published book „ Der Masernbetrug “ was not complied with.

28 The complete award text was not made public, since it was expressly only sent to the recipients of the newsletter of „ k ...- k... Publishers “ who had registered for it.

29 With regard to the content of the claim, the specified criteria are (cf. for the list of these by the plaintiff: Bl. 223 u. 384 ff. D. A.) not applicable to the district court. Only a scientific publication in the sense of an original work and not a summary in which it is claimed and proven that the measles virus exists should have been submitted, which is only possible through the documentation of an isolation and biochemical determination of the isolate and in which the diameter is determined, which is only possible through „ negative staining “, which was not done. Also, the diameter should not be determined on the basis of models and drawings, which was in the 6th. Publication was (Presslings). It would have been to Ms. PD Dr. M...(RKI) the question of the diameter of the measles virus must be asked, since this is of central importance. When interpreting the award, the background of the publication must also be taken into account. It was recognizable, that the award is aimed at the RKI and its activities and only publications after the IfSG came into force in 2001 and after the DFG rules were laid down in 1998. The publisher would have regularly carried out „ k ... - k ... campaigns “, which asked informed citizens to ask the RKI and the state health authorities for evidence in the form of scientific publications, that would prove the existence of disease-causing viruses and the measles virus. The subscribers of the „ k ...- k...-Verlags “ were trained through previous publications and events, how to create a scientific publication and how to recognize its content, whether it contains evidence of the existence of a virus and the determination of its diameter. Only an original work could contain the exact description of the experiments, the data evaluation and the discussion of the results. The subscribers knew that the proof of the existence of a virus could only be provided by its isolation, the documentation of the isolation that had taken place and then by documenting the determination of its few components. The recipients of the newsletter should have been able to check the evidence submitted directly and themselves.Many scientific publications are also very difficult and costly to obtain for laypeople. This is also why an original work should have been submitted. By order of April 24, 2014, the district court overruled the criteria that it was only a publication, an original work that came from the RKI, and another criterion, namely the causation for measles disease added instead. In addition, the claim never required compliance with the „ K ... 'postulates “.overridden and another criterion, namely the causation for measles disease, added instead. In addition, the claim never required compliance with the „ K ... 'postulates “.overridden and another criterion, namely the causation for measles disease, added instead. In addition, the claim never required compliance with the „ K ... 'postulates “.

30 In fact, the publications submitted did not meet the criteria for the award either individually or in the overall view. The court had not already examined the articles itself. It is not disputed that these were only submitted in the appeal process (in English) (Bl. 256 f d. A.). So the court accepted, that statements and arguments were taken arbitrarily from the six publications and the

publications cited therein, and contrary to the statements and intentions of the authors, they were interpreted and interpreted and additional ones Statements that were not made in the publications were invented. Finally, a conglomerate of the authors' statements was constructed in an incomprehensible and verifiable manner. So the expert had the publication „ H ... and M...“ either not read or deliberately misrepresented. The authors there just found that there was no information on the multiplication of the virus. After all, this publication is only secondary literature and does not respect the principle laid down by the expert that the external presentation of own results is an imperative prerequisite for this type of publication, because the authors cited themselves. With regard to the alleged inadequacy of the individual works, the defendant largely repeats and supplements his lecture from the first instance. The chain of indications he requested to detect the measles virus was not new. The in its 78-page statement on the expert's report of November 17.Questions raised in 2014 were not answered by the latter. The expert was biased because he gave the first name of the presiding judge of the Ravensburg district court in his letter of 03.03.2015 (Bl. 132 d. A.) mentioned, although his first name never appeared in the proceedings. Finally, the information provided by the expert would also be refuted by the expert opinions that had been obtained out of court (cf. for example information from the lawyers Dr. E ... who had read the publications; Professors K ..., W ... and the Dresden. L ... and K...; Anl. A 12 - A 15, sheet 543 ff d. A. and annex to the defendant's pleading dated 9.2.2016, A 22, p. 662 d. A.). Finally, it should be remembered again that the RKI, PD Dr. M ... who was named as a witness,a size of the viruses of 120 - 400 nm was found and ribosomes could also have been found in the material, which, according to the expert, speaks against a virus. Ultimately, the decision of the regional court was also incorrect, since the expert - contrary to the judgment - did not say that control experiments had been carried out on the basis of which it could be excluded, that not only cell-specific artifacts were found in the studies.that control experiments had been carried out on the basis of which it could be ruled out that not only cell-specific artifacts had been identified in the studies.that control experiments had been carried out on the basis of which it could be ruled out that not only cell-specific artifacts had been identified in the studies.

31 The defendant requests:

32 1. Following the defendant's appeal, the judgment of the Ravensburg Regional Court of March 12, 2015, Az .: 4 O 346/13, is amended.

33 2nd. The lawsuit is dismissed.

34 The plaintiff claims,

35 reject the appeal.

36 The plaintiff submits:

37 The judgment of the regional court shows no evidence of an incomplete or incorrect factual finding or assessment. The prerequisites for obtaining a new report were not met. New factual submission is late. Moreover, only the objections from the first instance that had already been dealt with at the time were raised. There were no procedural defects. Questions could have been asked and were also asked. The expert was not biased because the judge's first name was to be seen on emails sent to all parties. The content of the protocol of March 12, 2015 is correct. Procedural deficiencies would be contested, as would belated claims.It is expressly the „ background “ of the publications of „ k ...- k... Publishers “ contested. The website was also freely accessible, at least this also applies to the newsletter, which was previously undisputed. The opinions now submitted are not suitable for questioning the judicial opinion. Not only would there be concerns about the scientific nature of his work, for example regarding the expert W. According to the information on the Internet portal „ P ... “, Johann L... Followers of „ Germanic new medicine “, against whom multiple professional bans were imposed. Ms. K ... run a naturopathy practice in M ... and Ms. K ... had the submitted report as part of a commissioned work for the M... GmbH & Co. KG created.Publishers “ contested. The website was also freely accessible, at least this also applies to the newsletter, which was previously undisputed. The opinions now submitted are not suitable for questioning the judicial opinion. Not only would there be concerns about the scientific nature of his work, for example regarding the expert W. According to the information on the Internet portal „

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38 For the further details of the parties' submission in the second instance, reference is made to the changed briefs and annexes as well as the minutes of the meeting on February 16, 2016.

II.

39 The appeal is partially inadmissible. To the extent permitted, it is also successful because the plaintiff did not meet the criterion of claiming to prove the existence of the measles virus by „ a scientific publication “.

40 A. Admissibility of the appeal

41 The appeal is partially inadmissible.

42 The defendant's appeal was submitted in due form and on time and was also justified in a permissible manner with regard to the right to payment of the amount awarded in the amount of EUR 100,000 plus interest and costs. With regard to the granted right to reimbursement of pre-judicial legal fees for the defendant's assertion of the declaration of injunctive relief, the appeal is inadmissible, since it was not duly justified in this respect.

43 According to Section 520 (1) ZPO, the appellant must justify the appeal. According to Section 520 (3) Sentence 2 No. 2 ZPO, the grounds for the appeal must contain the description of the circumstances, the appellant considers that the infringement and the relevance of the contested decision arise. Since the grounds for the appeal should indicate the factual and legal reasons for which the appellant considers the judgment under appeal to be incorrect, he has to - tailored to the dispute and understandable in and of itself - explain those points of a legal nature which he considers to be incorrect and state the reasons for this, from which the error of those points and their relevance for the contested decision are derived (cf. only BGH, decision of January 28, 2014, III ZB 32/13, juris-Rn.12).

44 In the present case, the grounds for appeal dated July 7, 2015, which were submitted on time, did not show at all why the decision of the regional court regarding the awarded legal fees for the request for injunctive relief should be set aside and the lawsuit dismissed. Also in the brief of November 16, 2015, received by the Higher Regional Court on November 17, 2015, a reason corresponding to the requirements mentioned is not given. To the extent that there is a complaint for the first time that there is a procedural violation, that „ was not negotiated at the trial on March 12, 2015 and the reasons for the conviction and the co-plaintiff were only brought up in the written statement of reasons and the defendant could not defend and relieve himself here“ and the plaintiff's claims in this regard would be contested (Bl. 383 d. A.),here too there is no explanation as to why this would be significant for the contested decision. The same applies to the procedural complaints that have been brought forward. Ultimately, however, this is not the case, since in any case a proper reason was not submitted within the appointment period.

45 The appeal is therefore, insofar as the defendant has opposed the sentence to pay EUR 492.54 and annual interest from it in the amount of 5 percentage points above the respective base rate since April 16, 2014 (Judgment tenor no. 1. c.) turns, acc. § Section 522 (1) p. Discard 2 ZPO as inadmissible.

46 B. Reasonability of the admissible appeal regarding the amount awarded in the amount of EUR 100,000.00 plus interest and costs

47 Insofar as the defendant's appeal is admissible, it is also justified, since the amount awarded could only have been earned if, if the circumstances to be proven had all been demonstrated in a self-contained work.

48 a. Effectiveness of the judgment

49 The judgment of the district court is effective.

50 The judgment was duly issued. According to Section 310 (1) Sentence 1 ZPO, the judgment is announced on the date on which the hearing is closed or on an appointment to be scheduled immediately. It is announced in accordance with section 311 (2) sentence 1 ZPO by reading the judgment formula and must be signed by the judges who participated in the decision (section 315 (1). 1 sentence 1 ZPO). The signatures of the judges must not yet be fulfilled when the announcement is made (cf. Zöller / Vollkommer, ZPO, 31. Ed., § 309 ZPO marg. 2). In the present case, all judges who participated in the decision signed both the read-in verdict and the fully drafted judgment sent to the parties.

51 It was not a so-called protocol judgment, which was the basis of the decision of the BGH (NJW-RR 2007, 141) cited by the applicant. The protocol judgment is a chair judgment, in which the entire text of the judgment is included in the minutes or an annex to be connected to them and, in contrast to the local case, there are no separate grounds for judgment (cf. § 540 para. 1 sentence 2 ZPO and Zöller / Vollkommer, op. Cit., § 310 marg. 3 m.w.N.). In the case cited above, the appeal judgment and reasons were only included in the minutes and this was only signed by the chairman of the Senate and the office's official and the missing signatures of the two seats could be found Judges are no longer legally compliant due to the expiry of the relevant 5-month maximum period for lodging an appeal (§ 548 ZPO).

52 Insofar as the defendant complains that the three-week withdrawal period (Section 310 (1) Sentence 2 ZPO) has not been met, in fact the completely dismissed judgment, which was announced on March 12, 2015, only reached the office on April 13, 2015 (cf. Bl. 180 R d. A.), this cannot affect its effectiveness (cf. Zöller / Vollkommer, op. Cit., § 310 ZPO marg. 5 m.w.N.), even if important reasons, in particular the scope or difficulty of the matter, should not have required an extension of the deduction period. It has not been substantiated that Judge P ... was unable to prepare adequately for the trial.

53 The other procedural complaints, themselves assuming that they were justified, cannot justify the ineffectiveness of the judgment. Even void and incorrect decisions are not ineffective (cf. Zöller / Vollkommer, op. Cit., Before § 300 ZPO marg. 20

m.w.N.). Furthermore, it should be pointed out that the contested judgment will only be examined for a defect in the procedure, which is not to be taken into account ex officio, if this is also in accordance with Section 520 (1). 3 ZPO has been asserted in the appointment justification. The procedural defects mentioned were not asserted in the appeal notice according to Section 520 (3) ZPO, but only in November 2015 by the defendant's representatives' pleading dated 11. December 2015 (Bl. 379 ff d. A.).

54 b. The plaintiff is not entitled to the reward awarded in accordance with § 657 BGB.

55 Anyone who suspends a reward for taking an action, in particular for achieving success, by public announcement is obliged to pay the reward to the person who carried out the action, even if the latter did not act with due regard to the claim (§ 657 BGB).

56 aa. Public announcement

57 The defendant has the claim according to. K 1 of November 24, 2011 made public on the Internet.

58 Public announcement means announcement to an individually indefinite group of people, e.g. B. in the press, on stop columns, by direct mail to members of a professional group, so that it is uncertain which and how many people have the opportunity to take note of it (cf. Palandt / Sprau, BGB, 75. Ed., § 657 BGB marg. 3) .

59 In the first instance, it was not disputed that the full text of the award was visible to everyone on the Internet. No request was made to correct the part of the facts of the judgment of the regional court, which contains the undisputed factual submission.

60 The defendant is excluded with the new means of defense, namely with the assertion that the claim was only visible to subscribers to the newsletter. According to Section 531 (2) ZPO, new means of attack and defense are only permitted if they

61 1. concern a point of view that has been clearly overlooked or considered insignificant by the court of the first instance,

62 2. were not asserted in the first instance due to a lack of procedure, or

63 3. have not been asserted in the first instance without this being due to negligence on the part of the party.

64 It is neither stated nor evident that one of the reasons mentioned for the subsequent approval of the lecture would be relevant here.

65 Moreover, even if the declaration was addressed to an individually delimited group of certain persons, this would only lead to the fact that it was then a contract offer in need of acceptance, to pay a certain wage for a certain action (cf. see: Palandt / Sprau, op. Cit., § 675 BGB marg. 3 m.w.N.). By the confirmation given to the plaintiff on January 30, 2012 (Anl. K 3) that the claim still applies, the defendant would have made the offer to conclude a corresponding contract, which the latter would then have accepted. The consequences would be legally the same as for the award.

66 bb. Will to bind the law and interpretation of the claim

67 b.b.1. The defendant's claim is not lacking in the will to bind the law.

68 In the present case, it could already be questionable whether the claim does not lack the will to bind the law necessary for the submission of a declaration of intent. If the interpretation already shows that the person who is promoting does not want to be legally binding, there is no declaration of intent after the normative explanatory value (cf. Staudinger / Bergmann, BGB, Neubarb. 2006, § 657 BGB marg. 28 m.w.N.). In this way, the rule is sometimes set up in teaching that in situations in which the person who is praised does not want success or even considers it impossible (so-called. negative statements) may indicate a certain probability that the person who is exercising the will to bind the law is missing (cf. Staudinger / Bergmann,

op. Cit. m.w.N.). But even in the event that the praiser does not seriously wish the success for which he promises the reward,he even considers it impossible to bring about the will to bind the law cannot be denied, since he must create an incentive to show, that the action to be rewarded is not possible and therefore the claim represents a seriously meant obligation (cf. Staudinger / Bergmann, op. Cit. and Palandt / Sprau, op. Cit., § 657 BGB marg. 4 m.w.N.). So it is here too. In addition, the plaintiff has expressly confirmed to the defendant that the claim is serious.So it is here too. In addition, the plaintiff has expressly confirmed to the defendant that the claim is serious.So it is here too. In addition, the plaintiff has expressly confirmed to the defendant that the claim is serious.

69 b.b.2. Interpretation of the claim

70 What exactly is the subject of the award must be determined by interpretation. This depends on the possibility of understanding an average participant or a relative of the group of people just mentioned. In addition to the text of the declaration, only circumstances that are known or recognizable to everyone or to any member of the groups addressed may be taken into account (cf. BGHZ 53, 307 juris-Rn. 12; Palandt / Ellenberger, op. Cit., § 133 BGB marg. 12 m.w.N., Erman / Berger, BGB, 14. Ed., § 657 BGB marg. 10: Interpretation according to §§ 133, 157 BGB). In the present case, it can be assumed that - according to the undisputed facts in the first instance - everyone had access to the text of the award and everyone on the topic „ Vaccination “, in particular „ measles vaccination “ interested internet users belonged to the addressed group.

71 According to § 133 BGB, the real will must be researched when interpreting a declaration of intent and not adhered to the literal meaning of the expression. According to § 157 BGB, contracts are to be interpreted as good faith with regard to the custom of transport requires. Sections 133, 157 of the German Civil Code apply both to the interpretation of contracts and to unilateral legal transactions - such is the claim (cf. Palandt / Sprau, loc. Cit., § 657 BGB marg. 1 with evidence also for the counter-conception) - and individual declarations of intent. The scope of both regulations coincides. They are to be used side by side in the design (cf. Palandt / Ellenberger, op. Cit., § 157 BGB marg. 1 m.w.N.).

72 Both the wording of the declaration and the accompanying circumstances, in particular the history of its origins, the statements of the parties and their interests, as well as the purpose pursued by the legal transaction, must be taken into account. An interpretation that is appropriate for interests on both sides is required; in case of doubt, preference should be given to the interpretation, which leads to a reasonable, contradictory and fair result, that is in line with the requirements of fair business transactions (cf. Palandt / Ellenberger, op. Cit., § 133 BGB marg. 14 - 20 m.w.N.).

73 With the district court it can be assumed that the claim (Anl. K 1) the defendant's recognizable interest in the interpretation is of crucial importance for third parties.

74 The defendant is concerned, starting from the irrefutable certainty of the non-existence of the measles virus („ since we know, that the measles virus does not exist and cannot exist if you are aware of biology and medicine ... “), to show that „ the idea, that measles are caused by a virus “ is part of an advertising campaign that is supported by the federal government and the WHO in favor of the pharmaceutical industry. It is therefore claimed „ false “, „ ... so that human dignity ... “ is violated „ and on this basis by vaccinating physical integrity and the right to life ...“ damaged. The focus is particularly on the RKI, namely private lecturer Dr. M... He assumes that given the fact,that the existence of the measles virus cannot be proven by the claim that „ the further procedure “ will be designed in such a way that complaints to the superiors of private lecturer Dr. M ... be directed, since their behavior „ - to be pretended to be a measles virus - must not be accepted “. The competition thus forms part of the campaign carried out by the defendant as an opponent of the measles virus vaccination, that his claim - already described as irrefutable - about the non-existence of the measles virus is refuted.The competition thus forms part of the campaign carried out by the defendant as an opponent of the measles virus vaccination, that his claim - already described as irrefutable - about the non-existence of the measles virus is refuted.The competition thus forms part of the campaign carried

out by the defendant as an opponent of the measles virus vaccination, that his claim - already described as irrefutable - about the non-existence of the measles virus is refuted.

75 Nevertheless, as the defendant also confirms in the appellate court, the claim should have been serious, so that the „ proof “ can be started in accordance with the award.

76 However, the defendant's restrictive requirements must be observed, since this is - recognizable to third parties - not due to the detection of the measles virus.

77 (1) Criterion: Evidence from a single scientific publication

78 The prize money is based on the clear wording of the tender

79 „ ... paid out when a scientific publication is presented in which the existence of the measles virus not only asserts, but also proves and in it. a. whose diameter is determined.

80 The prize money is not paid out if the diameter of the measles virus is only a model or drawing like this ... “

81 According to the clear and unambiguous wording is after that one Submit publication in which the proof must be met in accordance with these requirements.

82 Not only the wording speaks for such an understanding, but also the fact that, that a single work is not only self-contained in terms of its external form and thereby clearly defines the substance that is structured within itself, but also that no dispute can arise about it, through which text passage which of a large number of works which proof can be carried out. With a large number of works through which proof is to be provided in their overall view, it can be significantly more difficult, each of the works methodically and in terms of content on a comparable and meaningful level. In addition, it considerably limits the effort of the examination if, according to the wording, the evidence must be kept in a work. It is obvious that the defendant, recognizable also for third parties, cannot wish,that about 50, 100 or 500 different works are presented, from which individual text passages or sections are then put together like a puzzle, in order to then argue about the statement in the overall context.

83 The reasons for the practicality and the reasonableness speak in favor of understanding the tender as it is to be understood by the wording. Furthermore, it is also recognizable to the third party and, given the fact that the person who is the beneficiary also pays the reward, it is not in good faith to complain about the custom of traffic in consideration of the custom (§ 157 BGB) that the defendant does not want to see his text interpreted beyond the wording in favor of the demonstrator, and must be interpreted.

84 Finally, there are no criteria in the award text for a reasonable restriction on the number of works to be presented as evidence, and no criteria are evident:

85 - Contrary to the district court, it cannot be concluded from the need that publication practice in the medical research context has supposedly not been the monograph for decades, that, contrary to the wording, the individual aspects can now be proven by a large number of specialist articles.

86 Even if there was a practice in how the expert stated that practically no individual monographs on a topic have been created in recent decades, it does not appear to be excluded, that such exists and can be presented. Like the publications from the 50s (Enders u. Peebles and Beck u. v. Magnus) show, publications were also submitted that are over 60 years old, i.e. were written at a time when monographs may have been published. Furthermore, it cannot be ruled out from the outset that a monograph suitable for the evidence exists or is published for the purpose of obtaining the considerable prize money. For the defendant to have also thought of a scientific publication specially created for the award,also speaks the fact that the

defendant claims that the existence of almost all existing approx. 2,000 types of virus, including their diameter information, were proven in a single publication (Bl. 386 d. A.).

87 While it may be the plaintiff's and the appellant's need to set the hurdles for the evidence, the result is that of the praiser who alone determines what he is willing to do, to pay a reward. In this sense, it can also be seen by the third party that the person who is praising does not want to make it easier for the potential applicants of the prize money, the evidence that he does not want anyway that a measles virus exists, to enable.

88 - The fact that the defendant did not immediately raise the objection after submitting the publications that six publications were submitted and not just one does not conflict with this. The defendant immediately objected that none of the work submitted was suitable to provide evidence. It was only when the expert presented his result that the evidence could be regarded as guided when all the publications were viewed together that it was now necessary to object, that the evidence was then not carried out by a single job.

89 - The interpretation according to good faith with regard to the custom of traffic according to § 157 BGB does not require a more favorable interpretation for those applying for the prize money. It is not against good faith if the person who praises EUR 100,000 has his own ideas - recognizable to third parties - they may also make it difficult, to earn the prize money - determined as the yardstick for the award. A traffic custom that could conflict with this is neither presented nor recognizable.

90 As a result, an interpretation contrary to the clear wording of the award is out of the question.

91 (2) Criterion „ Original work “

92 Insofar as the defendant believes that only an „ original work “ can be submitted, by which he understands the exact description of the experiments, the data evaluation and the discussion of the results (Bl. 387 d. A.), although he may have striven for this, this does not appear in the award text, which is to be interpreted according to the objective recipient horizon. A review would be sufficient if, based on previous work, it provides scientific evidence of the existence and size of the measles virus.

93 (3) „ Publication must come from the RKI “

94 It can be seen from the relevant recipient horizon neither according to the wording nor according to the recognizable purpose of the tender that it must be a publication of the RKI. The fact that the question regarding the diameter of the measles virus to PD Dr. M ... should be asked, does not suggest this, like the defendant's reference in his reply to the plaintiff to the IfSG.

95 (4) Publication must be „ scientific “ in the sense of the DFG criteria of 1998

96 The public concerned cannot recognize from the award text that a scientific publication should be carried out according to the standard of the DFG criteria from 1998. Only a „ scientific publication “ is required. The IfSG, to which the award does not refer in this context, also does not provide a scientific standard.

97 The Brockhaus Encyclopedia in 30 volumes, 21. Ed., Vol. 30, explains under „ scientific book “: „ content-related name for a book that is dedicated to a scientific topic, is written based on scientific knowledge “. In the large dictionary of the German language of the Duden (Vol. 6) is scientifically defined as „ regarding science, belonging to it, based on “.

98 In the Wikipedia internet lexicon, scientific work is defined as „ systematically structured text, in which one or more scientists represent the result of his or her independent research “. According to this definition, the work of „ H ... u. M ... “ in any case does not constitute any scientific work, since it also according to the expert (Bl. 17 of the report) represents an overview article that summarizes the results of original works by authors.

99 However, this definition should be questioned, since it also appears to be scientific if the previous work is systematically evaluated, summarized and new conclusions may be drawn from it.

100 Since a review that systematically summarizes and processes scientific knowledge on a topic from scientific publications is based on scientific knowledge, the work of „ H... and M ... “ to be regarded as scientific work, as well as that of „ D ... et al “.

101 The defendant claims that the latter two publications are not independently assessed. The publication of „ D ... et al. “ was published in an internal magazine of a Japanese college, which demonstrably was not independently examined. In the review of „ H ... and M ... “, the authors cited themselves, although the expert had presented the external research results as an imperative for this type of publication (Bl. 369 d. A.).

102 According to the expert's statements, all articles are taken from magazines with a specialist review system and are therefore usually checked by at least two independent specialist scientists before publication and, if necessary. have been provided with correction requirements (S. 17 of the report). The defendant's claims to the contrary. Ultimately, since it is not relevant to the decision, it can be seen whether the defendant's objections are well founded and whether they are not, since the process would be properly introduced in the second instance for the first time, according to Section 531 (2) ZPO.

103 (5-7) Proof of the existence of the measles virus, diameter and non-use of models

104 The regional court's assessment of evidence that the expert opinion obtained has proven that, that the publications submitted by the plaintiff as a whole provided evidence of the existence and the pathogen properties of the measles virus and that the diameter had also been determined in the form requested by the defendant, is not objectionable in the result.

105 According to Section 529 (1) No. 1 ZPO, the Court of Appeal has the facts ascertained by the court of first instance, unless concrete indications give rise to doubts as to the correctness or completeness of the decision-making statement and therefore require a new determination - as here not - to base its negotiation and decision. New facts are only to be considered insofar as their consideration is permissible (Section 529 (1) No. 2 ZPO).

106 The defendant is excluded from complaints against the opinion of a judicial expert in accordance with Section 531 (2) ZPO if he could have asserted them at first instance, because complaints about an expert opinion are among the new means of attack or defense (cf. KG Berlin, MDR 2007, 48 m.w.N. u. Zöller / Heßler, op. Cit., § 531 ZPO, marg. 31, m.w.N.).

107 The district court has given the information of the expert, whose specialist knowledge cannot be questioned, in detail, comprehensibly and convincingly (cf. especially p. 20 f. the judgment under 2.). It is not recognizable that laws of thought have been violated or other mistakes have been made.

108 Insofar as the defendant complains that the court did not read and examine the publications written in English itself, this was not necessary on the one hand because they are medical articles, who cannot be judged by the court in any case, both in terms of language and in their scientific classification and evaluation. On the other hand, it was not criticized in the first instance that the expert misrepresented the content of the articles. The defendant is therefore excluded from this complaint in accordance with Section 531 (2) ZPO.

109 The same applies to the objections that statements and arguments were arbitrarily taken from the six publications and the publications cited therein, which, contrary to the statements and intentions of the authors, would be interpreted and interpreted, additional statements had been invented that were not made in the publications, a conglomerate of the statements of the authors will be constructed in an incomprehensible and verifiable manner and further objections, which will still have to be dealt with separately.

110 After submitting the expert opinion dated November 17, 2014, the parties were given the opportunity to submit applications and supplementary questions for the written report by January 20, 2015 (Order of November 24, 2014, sheets 98, 99 d. A.).

The defendant commented on the expert opinion by law of 3.2.2015 and asked nine questions, which in turn were submitted to the expert. The expert has given a supplementary opinion on this (Opinion of 3.3.2015, on sheet 132 d. A.). In the appointment of March 12, 2015 (Bl. 139 ff) there was the opportunity to ask the expert questions that, according to the minutes of the meeting, in particular with regard to those of Assessor S... questions asked for the defendant, was also used. The defendant did not have to be granted his own direct right to ask questions (cf.§ 397 ZPO; see below).

111 The defendant's personal statement on the report, which he prepared on 2.2.2015 in the amount of 78 pages (Appendix. to sheet 125 d. A.), did not have to be considered in detail by the expert and the court after nine supplementary questions were raised by the lawyer's brief of 3.2.2015 and the court made it clear, that it evaluates them in such a way that „ a legal consolidation of the defendant's objections and supplementary questions has taken place “.

112 According to § 78 ZPO, the district court is required to practice law. In this context, a written lecture in the legal dispute before the district court must be given by the lawyer. In this respect, the defendant's representative also commented on the expert's report and asked supplementary questions (cf. also section 411 (4) ZPO). According to Section 397 (1) ZPO, the parties are not entitled to directly interview the witness (the standard applies accordingly to experts, Section 402 ZPO). However, when they are questioned, they are entitled to have questions asked. Only the lawyer has the right to direct questions to the expert (§§ 397 Paragraph 2, 402 ZPO), the party itself can allow the chairman to do so, which probably did not happen here.

113 The district court has (Bl. 126 d. A.) demonstrated that it is assumed that the defendant's statement „ contained a legal consolidation of the defendant's objections and supplementary questions “. This was neither in writing nor in the appointment of March 12, 2015 (Bl. 139 ff d. A.) contradicted. The court could therefore assume that the questions asked by the lawyer were decisive and did not have to go into the defendant's 58 or 78-page statement itself. It is also not claimed that the defendant's questions were not admitted to the expert on March 12, 2015.

114 The minutes do not show that questions could no longer be asked in the appointment. After the dictation of the expert was approved by the expert and the general decision to re-advance the game was expressly waived, the minutes noted that no further questions had been asked of the expert, the parties contested the result of the evidence with the applications recorded at the beginning and no further requests had been made (Bl. 149 d. A.).

115 The note in the minutes formally refers to the negotiation of the taking of evidence according to (cf. Zöller / Stöber, op. Cit., § 165 ZPO, marg. 2, m.w.N.). On the other hand, only proof of counterfeiting (§ 165 sentence 2 ZPO) is permitted. It is not claimed that knowingly incorrect certification or subsequent falsification in the sense of. §§ 267, 271, 348 StGB has been done. Furthermore, it is not disputed that further questions were not addressed to the expert, as noted in the minutes on p. 11.

116 Insofar as the defendant dartut that the judgment was in any case based on incorrect conditions in that the expert did not state that the publications contained control experiments to exclude cell-specific artifacts (S. 23 of the judgment under b., Paragraph 2), cannot be followed. In his supplementary statement dated March 3, 2015, there S. 3 (Bl. 134 d. A.) under 6. and states that the necessary data and control experiments to exclude cell-specific artifacts instead of the measles virus are contained in the specialist articles, referring to his report.

117 Ultimately, the defendant cannot be successful with the fact that it was allegedly not clarified whether ribosomes were not found inside the measles viruses at the RKI and that this excluded the property as a virus. The expert has (protocol S. 9, sheet 147 d. A.) stated that the measles virus contains no ribosomes and that such a message is astonishing and would attract the greatest attention, the concept of the virus would of course not necessarily be thrown over the pile „. The conceptual understanding of the virus is definitely in flux. The presence of ribosomes alone does not necessarily stand in the way of the existence of a virus.

118 Insofar as the diameter of the measles virus by the RKI was allegedly given as 120 - 400 nm (cf. Bl. 23 d. A.), this does not conflict with the assessment of evidence by the district court. This size range is within the range of 50 to 1,000 nm designated

by the district court based on the expert opinion as scientifically plausible. It can therefore not be recognized that the two measured values are mutually exclusive.

119 The objection that the book „ Der Masernfraud “ published by the defendant was not dealt with does not apply either. There is already no substantiated lecture on the extent to which evidence should be provided by what content. In addition, both the expert and the district court responded to the defendant's own hypotheses and took note of and evaluated them as such. The defendant did not submit the book.

120 Insofar as the defendant thinks that the expert is biased because he has given the supplementary opinion of 03.03.2015 (Bl. 132 d. A.) to „ Mr. M... S ... ... “ to the Ravensburg Regional Court, i.e. used the first name of the chairman, is not already evident, why this should give rise to a reason for bias (especially on the email of the district court to the expert from 2.3.2015 whose first name was recorded; see. Bl. 130). Furthermore, the bias request would also be made too late. According to § 43 ZPO, which is also to be applied accordingly for experts (cf. Zöller / Vollkommer, § 43 ZPO, marg. 2, m.w.N.), a party can judge - here: the expert - no longer refuse because of the concern about bias if, without asserting the reason for the refusal known to them,admitted to a negotiation or made requests. The defendant both entered the trial and made applications without asserting the alleged reason for bias now mentioned.

121 Insofar as the defendant has now submitted a number of statements from opponents of vaccination who are supposed to support his position to the appellate court, it can remain open - because it is not relevant to the decision -, whether these would still have been permitted (Section 531 (2) ZPO).

122 As a result, the appeal, insofar as it is admissible, is successful because the criterion of the claim to prove the existence of the measles virus by „ a scientific publication “, was not fulfilled by the plaintiff. As a result, the plaintiff is not entitled to any pre-judicial legal fees.

III.

123 1. The cost decision is based on sections 91, 92 (2) no. 1 ZPO.

124 2nd. The decision on provisional enforceability is based on §§ 708 No. 10, 711 ZPO.

125 3rd. The revision is not permitted because the requirements of Section 543 (2) ZPO are not met.